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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/617,917	07/10/2003	Wolfgang Neuberger	BJA338D	4236

7590 06/28/2005

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515 Shaker Road
East Longmeadow, MA 01028

EXAMINER

SHAY, DAVID M

ART UNIT	PAPER NUMBER
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3739

DATE MAILED: 06/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/617,917

Applicant(s)

NEUBERGER, WOLFGANG

Examiner

david shay

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on December 9, 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date July 10, 2003.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 3, 4, 6, 8, and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Dabby. Mc Daniel teaches a device and method for irradiating tissue to produce biostimulation using optical fibers, wherein any type of tissue can be irradiated. Dabby teaches the use of oligomode optical fibers. It would have been obvious to the artisan of ordinary skill to employ a device and method as taught by Dabby in the device and method of McDaniel, since McDaniel provides no particular structure for the fiber optic applicator, or, alternatively, to employ the device and method of McDaniel in the device and method of Dabby, since the device and method of Dabby is tied to no particular application, thus producing a device and method such as claimed.

Claims 2, 5, and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Dabby as applied to claims 1, 3, 4, 6, 8, and 9 and further in combination with Mori. Mori teaches the use of cut away sections of waveguide that leak radiation along their length. It would have been obvious to the artisan of ordinary skill to employ a device and method as taught by Mori in the device and method of McDaniel as modified by Dabby, or Dabby as modified by McDaniel, since McDaniel provides no particular structure for the fiber optic applicator and Dabby provides no particular requirement for the radiating portion of the fiber, thus producing a device and method such as claimed.

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Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Dabby as applied to claims 1, 3, 4, 6, 8, and 9 and further in combination with Diamantopoulos et al. Diamantopoulos et al. teach controlling the timing of pulses using a timer. It would have been obvious to the artisan of ordinary skill to employ the timer of Diamantopoulos et al in the method of McDaniel, since McDaniel provides no mechanism for timing the pulse application, thus producing a method as claimed.

Claims 11 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Dabby and Prescott. The teachings of McDaniel and Dabby are as set forth above. Prescott teaches applying laser therapy to a wound prior to covering the wound with a dressing. It would have been obvious to the artisan of ordinary skill to applying laser therapy to a wound prior to covering the wound with a dressing in the method of McDaniel, as taught by Prescott, since McDaniel provides specific protocol for dressing application, or to employ the parameters for treatment set forth in the method of McDaniel in the method of Prescott, since Prescott discloses no particular treatment parameters, and in either case to employ the fiber of Dabby, since neither Prescott nor McDaniel teach any particular fiber, thus producing a method as claimed.

Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over McDaniel in combination with Dabby as applied to claims 1, 3, 4, 6, 8, and 9 and further in combination with Sullivan. Sullivan teaches lining the floor of an enclosure with treatment LEDs. It would have been obvious to the artisan of ordinary skill to employ the radiator layout of Sullivan in the method of McDaniel, since the layout of McDaniel is not critical and provides no unexpected

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results, and since this radiator configuration is equivalent to the use of vertical panels, as shown by Sullivan, thus producing a method as claimed.

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-14 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,830,580 in view of Dabby. Dabby teaches the use of oligomode optical fibers to transport radiation. It would have been obvious to the artisan of ordinary skill to employ the oligomode fibers of Dabby to transport the radiation in the claimed method, since these transport radiation with little loss even in the presence of multiple bends, as taught by Dabby, thus producing a device and method such as claimed.

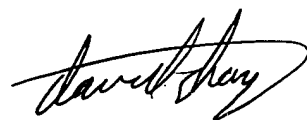
Any inquiry concerning this communication or earlier communications from the examiner should be directed to david shay whose telephone number is (571) 272-4773. The examiner can normally be reached on Tuesday through Thursday from 6:30 a.m. to 5:00 p.m.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak, can be reached on Monday, Tuesday, Thursday, and Friday. The fax

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phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



DAVID M. SHAY
PRIMARY EXAMINER
GROUP 330